

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

THE NEW MEXICO STATE INVESTMENT COUNCIL,
as Trustee of the LAND GRANT PERMANENT FUND and
the SEVERANCE TAX PERMANENT FUND,

Plaintiff,

Case No.D-101-CV-2017-02397

vs.

Case assigned to Singleton, Sarah

HFV ASSET MANAGEMENT, LP, CLARK HUNT, and
JOHN DOES 1-20,

JURY TRIAL DEMANDED

Defendants.

COMPLAINT FOR MONEY DAMAGES, CIVIL PENALTIES AND RESCISSION

Plaintiff, the New Mexico State Investment Council (“NMSIC” or the “Council”), in association with the Securities Division of the New Mexico Regulation and Licensing Department, for its Complaint for Money Damages, Civil Penalties and Rescission against the defendants, HFV Asset Management, LP (“HFV”), originally known as Arbitex Asset Management, LP (“Arbitex”), Clark Hunt (“Hunt”), and John Does 1-20, herein alleges as follows:

SUMMARY OF THE CASE

1. In March of 2005, defendant HFV, then known as Arbitex, was one of 82 firms that responded to a public request for proposals (“RFP”) issued by NMSIC for a small number of firms to manage hundreds of millions of dollars in hedge fund investments. Lacking confidence that HFV would prevail on its own merits in a competitive selection process, defendant Hunt sought to gain an unfair advantage by paying for influence over the process. Hunt had his

business partner arrange a face-to-face meeting at the Albuquerque Airport with two local individuals reputed to have such influence, Anthony and Marc Correra. The Correras explained that by virtue of Anthony Correra's close relationship with the Governor and the close relationship they both had with the State Investment Officer, they could enable HFV to obtain a substantial investment allocation from NMSIC. Hunt agreed to "pay to play."

2. Hunt's agreement paid off. In May of 2005, NMSIC awarded HFV an allocation of \$300,000,000 – three times as much as any other of the other successful hedge fund managers received. NMSIC paid HFV millions of dollars in management fees, which enriched Hunt and his business partner. Hunt authorized HFV to pay Marc Correra 25% of those management fees as a "finders" fee. Of course, Marc Correra was not paid for "finding" the well-publicized NMSIC RFP, but rather for getting the State Investment Officer to tilt the selection process in HFV's favor.

3. The two hedge funds-of-funds HFV managed underperformed NMSIC's benchmarks and its hedge fund portfolio as a whole; one of the two ultimately lost more than \$13,000,000.

4. NMSIC now seeks to recover the management fees HFV unjust received together with substantial additional damages associated with defendants' unlawful participation in the pay-to-play scheme.

THE PARTIES

5. Plaintiff, the New Mexico State Investment Council, is a state agency that serves as trustee of and is responsible for investing the Land Grant Permanent Fund ("LGPF") and the Severance Tax Permanent Fund ("STPF") (collectively the "Public Trust Funds"), which are

established under the New Mexico Constitution for the benefit of the citizens of New Mexico, the real party in interest.

6. The LGPF is New Mexico's largest sovereign wealth permanent endowment fund. The LGPF is funded with income and royalties from the sale and lease of public trust land.

7. The STPF is another sovereign wealth permanent endowment fund. The STPF is generally funded with severance taxes on the extraction of minerals and oil and gas from leases on public lands.

8. The Public Trust Funds currently own assets having a market value of approximately \$21,500,000,000.

9. Defendant Clark Hunt and non-party Barrett Wissman ("Wissman") were the owners, directly or indirectly, of defendant HFV Asset Management, LP.

10. HFV, which was headquartered in Dallas, Texas, and originally known as Arbitex Asset Management, LP, managed hedge fund-of-funds in which NMSIC invested.

11. Plaintiff does not know at this time, and despite reasonable investigation is unable to ascertain without discovery, the true names and capacities of the persons or entities being sued as Defendant Does 1 through 20. Plaintiff therefore sues these defendants by fictitious names. On information and belief, Defendant Does 1 through 20 are Hunt family trusts through which Hunt owned some or all of his interest in HFV and/or the trustees of those trusts. Plaintiff will amend this Complaint when it is able to ascertain the true names and capacities of these defendants and will add appropriate allegations as necessary.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Article VI, § 13 of the New Mexico Constitution and NMSA 1978, § 58-13B-38.

13. Venue is proper in this district because Plaintiff is a government entity whose principal office is located within this district and because venue is specifically authorized in this district by NMSA 1978, § 58-13B-38.

FACTUAL BACKGROUND

14. From 2003 through 2010, former Governor Bill Richardson (“Governor Richardson”) was the Chairman of the Council.

15. Before 2003, NMSIC invested the Public Trust Funds’ assets almost exclusively in core portfolios of public equities and low-risk fixed income instruments. After he was elected, Governor Richardson pushed the New Mexico legislature to authorize NMSIC to invest in much riskier alternative investments, including private equity funds, hedge funds, real estate and credit structured finance products.

16. From 2003 to 2009, the investment process at NMSIC with respect to alternative investments was corrupted by an unlawful scheme, the essence of which was to influence fiduciaries to breach their duties of loyalty to the beneficiaries of the Public Trust Funds, the citizens of New Mexico, by making decisions on and recommendations about alternative investments based on the personal and political interests of Governor Richardson and his close associates rather than solely on the best interests of the citizens of New Mexico.

17. The corrupted fiduciaries, former State Investment Officer Gary Bland (“Bland”) and former private equity advisor Aldus Equity Advisors (“Aldus”), breached their fiduciary duties by making undisclosed, conflicted decisions and recommendations in connection with an investment process that should have been, but was not, transparent to the staff of the State Investment Office (“SIO”), the entire Council and the public.

18. The person at the center of the corrupt scheme was Anthony Correra, a former securities salesman who was sanctioned by the United States Securities and Exchange Commission (“SEC”) for insider trading. Anthony Correra was Governor Richardson’s close friend and virtually constant companion. Anthony Correra helped Governor Richardson maintain a lavish lifestyle by, among other things, arranging and paying for expensive travel, meals, hotels, events and vacations. Anthony Correra spent hundreds of thousands of dollars for or on behalf of Richardson. Anthony Correra also provided free personal investment advice to Governor Richardson.

19. Governor Richardson held Anthony Correra out to insiders as his gatekeeper at the SIC. When fund managers approached Richardson seeking alternative investments from the SIC, Richardson referred them to Anthony Correra. One such fund manager referred to Anthony Correra as “the guy in New Mexico who has been our intermediary” and, more bluntly, as “the governor’s man who got us the money.” Another referred to him as Governor Richardson’s “gatekeeper” and “the unofficial and unpaid advisor to the Governor who covers investments on his behalf.” Anthony Correra used his power as gatekeeper both to reward Governor Richardson’s friends and political supporters and to attract additional supporters from the ranks of private equity and hedge fund managers.

20. Shortly after his election, Richardson chose Anthony Correra to serve on a committee to find a new State Investment Officer. That committee recommended Bland. Over time, Bland and Anthony Correra became close friends. Bland and Anthony Correra interacted frequently, usually on a daily basis, mostly by telephone or face-to-face.

21. Bland knew that Anthony Correra was Richardson’s close friend, political fundraiser, and a member of Richardson’s “inner circle.” After work, Bland would regularly

patronize the Rio Chama restaurant, where he would often meet Anthony Correra, sometimes alone and sometimes with Governor Richardson. Anthony's Correra's son, Marc Correra, also developed a social relationship with Bland and spent time with Bland at the Rio Chama and elsewhere.

22. As the State Investment Officer, Bland had unilateral authority to approve investments on behalf of the Public Trust Funds in most types of alternative investments, including hedge funds. After Bland was appointed, Marc Correra approached him with potential alternative investment opportunities on behalf of a number a fund managers. The Correras told fund managers that they could be helpful in obtaining investments from the SIC because of their relationships with Richardson and Bland.

23. Between 2004 and 2008, Bland unilaterally approved 14 alternative investments on behalf of the Public Trust Funds in connection with which Marc Correra received payments from the managers of those investments. In total, Marc Correra and the companies he controlled received more than \$18,000,000 from fund managers, investment advisors and other service providers doing business with NMSIC. Bland has admitted knowing that Marc Correra was getting paid millions of dollars in fees in connection with SIC investments.

24. In or about March 2005, HFV, then known as Arbitex, responded to a public RFP issued by NMSIC for hedge fund-of-funds managers.

25. Saul Meyer ("Meyer"), a partner in Aldus, NMSIC's corrupted private equity advisor, introduced Arbitex to Marc Correra. Meyer told Wissman that Marc and his father, Anthony Correra, could be helpful to Arbitex in getting an allocation. Hunt and Wissman then met with Marc and Anthony Correra at the Albuquerque Airport to discuss their interest in getting an allocation of capital for Arbitex to manage. The Correras explained that, by virtue of

Anthony Correra's close relationship with Governor Richardson and their close relationship with Bland, they had influence with respect to the selection process. The Correras told Hunt and Wissman that if they were hired, there would be a "high likelihood of success" in receiving an allocation from NMSIC. The Correras said, in substance, that they "can start it and can end it."

26. After Hunt and Wissman agreed to pay Marc Correra a fee, Bland awarded Arbitex an allocation of \$300,000,000. Bland was authorized to make the award unilaterally without advising or obtaining the consent of the Council. Bland made the award even though NMSIC's hedge fund advisor, New England Pension Consultants, did not recommend that Arbitex be given any allocation whatsoever.

27. On or about May 17, 2005, Arbitex entered into a Referral Agreement with Cabrera Capital Markets, LLC ("Cabrera"), a broker-dealer with which Marc Correra was associated. Arbitex agreed to pay Cabrera 25% of all management fees it received as a hedge fund-of-funds manager for NMSIC. At that time, Marc Correra and Cabrera were parties to a letter agreement dated February 2, 2005, pursuant to which Cabrera agreed to pay Marc Correra 90% of those management fees.

28. The Referral Agreement falsely referred to Cabrera as a "finder" who would "refer" one of its "contacts" desiring investment advisory services to Arbitex by providing in writing "the name, address and telephone number and, if available, financial information" about the contact. Exhibit A to the Referral Agreement identified NMSIC as the contact desiring advisory services. There was no mention of Marc Correra in the Referral Agreement.

29. Arbitex did not need Cabrera or Marc Correra to "find" or be "referred" to NMSIC, as Arbitex was already a respondent to a public RFP issued by NMSIC in a process that should have been transparent and based solely on merit not political influence.

30. By signing the Referral Agreement, Arbitex effectively agreed to pay Marc Correr as a condition to obtaining allocations from NMSIC in hedge fund-of-funds Arbitex/HFV would manage. In other words, Hunt and Wissman agreed to “pay to play.” They knew they were paying for influence and were participating in a fraudulent scheme, even if they did not know all the details of the scheme or the identities of everyone involved.

31. Part of the \$300,000,000 allocation Bland approved was invested in a pooled hedge fund-of funds known as HFV Multi-Strategy; another part was invested in a customized separate account hedge fund-of-funds known as Vintage Classic. NMSIC paid HFV millions of dollars in fees to manage those funds. Both funds underperformed NMSIC’s benchmarks. Vintage Classic ultimately resulted in a loss to NMSIC of more than \$13,800,000.

32. Bland never disclosed to the Council or the members of the public the material facts about the Correras, his relationships with them or their involvement with investments by NMSIC, including investments, like HFV Multi-Strategy and Vintage Classic, that he unilaterally approved.

33. In 2009, the corrupt scheme in New Mexico was exposed in part as a result of investigations by the Department of Justice, the SEC and the New York Attorney General’s Office (“NYAGO”) into the pay-to-play scheme at another public institutional investor, the New York Common Retirement Fund (“NYCRF”). Those investigations resulted in felony pleas from and prison sentences for former New York Comptroller Alan Hevesi, his close friend and advisor Hank Morris (“Morris”), and former NYCRF Chief Investment Officer David Loglisci (“Loglisci”). Loglisci admitted breaching his fiduciary duties by making investment decisions that benefitted Hevesi politically and resulted in fund managers paying millions of dollars to Morris.

34. One of the other participants in the New York scheme who pled guilty to a felony charge was Meyer, the person who introduced Hunt and Wissman to the Correras. While Aldus acted as a private equity advisor to the SIC, it also managed private equity funds; Aldus paid Morris in order to get an investment from the NYCRF in the Aldus/NY Emerging Fund it managed.

35. Wissman also pled guilty to a felony charge, for, among other things, having HFV pay Morris to get an allocation from the NYCRF for HFV Multi-Strategy, the same fund for which he and Hunt had HFV pay the Correras to get an investment from NMSIC. The NYAGO collected \$12,000,000 in disgorgement, fines and penalties.

36. When Meyer pled guilty, he made an allocation in which he admitted wrongdoing not only in connection with the New York scheme, but also with the New Mexico scheme. It soon became apparent that the Correras had pressured Meyer to recommend private equity funds to the Council. Meyer admitted that, in the fall of 2004, Anthony Correra paid him a \$10,000 cash bribe.

37. The Council performed an internal investigation and suspicion fell on Bland. Bland admitted that he had talked about investments with Anthony Correra on a daily basis, knew of Anthony Correra's close relationship with Governor Richardson and knew that Anthony Correra's son, Marc, was getting paid fees in connection with NMSIC investments. Bland claimed that he did not disclose Marc Correra's receipt of millions of dollars in fees to the Council, because he did not think it was important. Unsurprisingly, the Council thought the conflict of interest was important and should have been disclosed. Bland resigned as State Investment Officer on October 29, 2009.

38. Bland had fiduciary duties to act exclusively in the best interests of the Public Trust Funds and the citizens of New Mexico and to exclude all selfish interests and all consideration of the interests of third persons. He was obligated to make objective investment decisions, free from conflicts, politics or any other improper motives. If he found himself in a position of conflict, he was required to disclose that conflict to his co-trustees on the Council and to the beneficiaries of the Public Trust Funds.

39. Bland violated his fiduciary duty by approving investments in HFV Multi-Strategy and Vintage Classic without disclosing the conflicts of interest inherent in that decision.

FIRST COUNT

(Violation of New Mexico Securities Act)

40. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 39 of this Complaint as if fully set forth herein.

41. Section 58-13B-30 of the New Mexico Securities Act made it unlawful for a person, in connection with the offer or sale of a security, to employ any device, scheme or artifice to defraud, make an untrue statement of a material fact or fail to state a material fact where such an omission would be misleading, or engage in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person.

42. Defendants violated the New Mexico Securities Act by

- a) participating in a pay-to-play scheme;
- b) failing to disclose to the Council or to the beneficiaries of the Public Trust Funds the material fact that they were participants in a pay-to-play scheme; and
- c) engaging in an act that operated as a fraud or deceit on the Public Trust Funds.

43. The Public Trust Funds and their beneficiaries have been damaged and suffered a loss as a result of the defendants' violation of the New Mexico Securities Act.

SECOND COUNT

(Violation of Texas Securities Act)

44. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 39 of this Complaint as if fully set forth herein.

45. Section 33(A)(2) of the Texas Securities Act made it unlawful for a person to offer or sell a security by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

46. Defendants violated the Texas Securities Act by failing to disclose to the Council or to the beneficiaries of the Public Trust Funds the material fact that they were participants in a pay-to-play scheme.

47. The Public Trust Funds and their beneficiaries have been damaged and suffered a loss as a result of defendants' violation of the Texas Securities Act.

THIRD COUNT

(Aiding and Abetting Breach of Fiduciary Duty)

48. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 39 of this Complaint as if fully set forth herein.

49. Defendants knew that Bland owed fiduciary duties to the Public Trust Funds and the beneficiaries of those trust funds, the citizens of New Mexico.

50. Defendants aided and abetted Bland's breach of his fiduciary duties by knowingly and intentionally providing substantial assistance and encouragement to Bland in connection with NMSIC's investment in HFV Multi-Strategy and Vintage Classic by paying Marc Correra for the influence the Correras had promised at the Albuquerque Airport.

51. Defendants thereby aided and abetted Bland's breach of his fiduciary duties in a manner that was willful, wanton, reckless and oppressive.

52. The Public Trust Funds and their beneficiaries have been damaged and suffered a loss as a result of defendants' aiding and abetting Bland's breach of his fiduciary duties.

FOURTH COUNT

(Unjust Enrichment)

53. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 52 of this Complaint as if fully set forth herein.

54. Defendants knowingly unjustly enriched themselves at the expense of and to the detriment of the Plaintiff, the Public Trust Funds and the citizens of the State of New Mexico.

55. Defendants' retention of management fees wrongfully collected from the Plaintiff, the Public Trust Funds and the citizens of the State of New Mexico violates fundamental principles of justice, equity and good conscience.

FIFTH COUNT

(Conspiracy)

56. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 52 of this Complaint as if fully set forth herein.

57. A conspiracy existed among Bland, Anthony Correra, Marc Correra, Wissman and the defendants based on an express or implied agreement pursuant to which HFV would pay Marc Correra in exchange for investments from NMSIC in their hedge fund-of-funds.

58. The Public Trust Funds and their beneficiaries have been damaged and suffered a loss as a result of the actions taken by the defendants and others in furtherance of the conspiracy.

WHEREFORE, Plaintiff prays for relief and judgment as follows:

1. Compensatory damages.
2. Damages under Section 58-13B-40 of the New Mexico Securities Act.
3. Restitution and disgorgement of moneys unjustly obtained.
4. Punitive damages.
5. Statutory interest.
6. Civil penalties.
7. Costs.
8. Reasonable attorneys' fees.
9. Such other and further relief as this Court may deem necessary and just.

Dated: August 22, 2017

Respectfully submitted,

STATE OF NEW MEXICO

/s/ Bruce A. Brown

Bruce A. Brown
Deputy General Counsel
New Mexico State Investment Council
Special Assistant Attorney General
41 Plaza La Prensa
Santa Fe, New Mexico 87507
(505) 476-9517

Kenneth W. Ritt
Special Assistant Attorney General
Day Pitney LLP
One Canterbury Green
Stamford, Connecticut 06901
(203) 977-7318

John B. Nolan
Special Assistant Attorney General
Day Pitney LLP
242 Trumbull Street
Hartford, Connecticut 06103
(860) 275-0289

Kevin W. Munn
Special Assistant Attorney General
Day Pitney LLP
242 Trumbull Street
Hartford, Connecticut 06103
(860) 275-0453

Brandon Toensing
Senior Regulatory Attorney
Securities Division
New Mexico Regulation & Licensing
Department
2550 Cerrillos Road
Santa Fe, New Mexico 87505
(505) 476-4505

Attorneys for Plaintiff